IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

A.O.NO.595 OF 2003

Vipul Amitlal Shah .. Appellant

vs.

The Municipal Corporation
of Gr. Bombay. .. Respondent.

Miss Nisha Valani,Advocate for the Appellant.

Mr.J. Xavier, Advocate for the Respondent.

CORAM : A.S.OKA, J.

DATED : 28th February, 2005.

P.C. :

1. Heard the Advocates appearing for the Appellant, the Respondent Corporation and the Advocate for the third party Applicant in Civil Application No.257 of 2004.

2. Perusal of the order sheet shows that on 7.8.2003 ad-interim relief was granted by this Court which is admittedly operating till today. The order impugned in this appeal is the order by which pending the final disposal of Notice of Motion for temporary injunction taken out by the

Appellant Plaintiff, the learned Judge has declined to grant ad-interim injunction.

3. By order dated 9.2.2005 passed in Civil Application 257 of 2004 this Court appointed Court Commissioner for inspecting the suit premises in the light of the averments made in the said Application. The Court Commissioner has submitted the report. The report of the Commissioner prima facie, shows that there was no leakage in the kitchen of the Applicant's flat. However, Commissioner found that on the wall side of the kitchen cupboard some patches of dry water bubbles are seen after opening the cupboard. The Commissioner found that there was no leakage in the Applicant's bed room. However, he noticed that the ceiling was not in good condition. The Commissioner has also described the flat of the appellant in his report.

4. As ad-interim order in terms of prayer clause (a) of Civil Application 903 of 2003 is operating from 7th August 2003 and as the Notice of Motion is still pending, no purpose will be

served by keeping this Appeal pending in this Court. The Notice of Motion can be directed to be heard expeditiously. In so far as the Civil Application 257 of 2004 is concerned, no order is required to be passed and liberty can be granted to the Applicant in the said Application to take out necessary proceeding in the trial Court.

5. Hence I pass the following order:

(i) Ad-interim order dated 7th August 2003 passed by this Court in this Appeal from Order will continue to operate till disposal of Notice of Motion No.2859 of 2003.

(ii) The Applicant in Civil Application No.257 of 2004 will be at liberty to take out appropriate Application before the trial Court praying for impleading himself as party defendant to the suit. If such application is made, the same will be decided by the trial Court in accordance with law. The said application shall be decided before the Notice of Motion taken out by the Appellant is heard.

(iii) The Notice of Motion for temporary injunction being Notice of Motion No.2859 of 2003 will be heard and decided by the learned trial Judge as expeditiously as possible and in any event on or before 31.7.2005.

(iv) All contentions of the parties on merits are kept open. The parties are permitted to produce the certified copy of the Commissioner's report in the trial Court and both the parties will be permitted to rely on the said Commissioner's report.

. Appeal from Order is disposed of in the above terms with no order as to costs.

. All parties and the trial Court to act on the authenticated copy of this order.

(A.S.Oka, J.)